

**Board for Judicial Administration
Meeting Minutes**

**January 15, 2010
Temple of Justice
Olympia, Washington**

Members Present: Chief Justice Barbara Madsen, Co-Chair; Judge Michael Lambo, Member Chair; Judge Marlin Appelwick; Judge Rebecca Baker; Judge Stephen Brown; Judge Ronald Culpepper; Judge Sarah Derr; Judge Susan Dubuisson; Judge Tari Eitzen; Judge Deborah Fleck; Mr. Jeff Hall; Ms. Paula Littlewood; Mr. Sal Mungia; Judge Jack Nevin; Justice Susan Owens, Judge Glenn Phillips; Judge Stephen Warning; and Judge Chris Wickham

Guests Present: Mr. Jim Bamberger, Ms. Peggy Bednared, Justice Mary Fairhurst, Representative Marko Lias, Justice Charles Johnson, Ms. Marti Maxwell, Mr. John King, Mr. Tom McBride, Ms. Jean McElroy, Ms. Barb Miner, Ms. Joanne Moore, Senator Eric Oemig, and Mr. Craig Salins

Staff Present: Ms. Ashley DeMoss, Ms. Beth Flynn, Mr. Dirk Marler, Ms. Mellani McAleenan, Ms. Regina McDougall, and Mr. Chris Ruhl

The meeting was called to order by Chief Justice Madsen.

Public Financing of Campaigns for Supreme Court

Representative Lias is the prime sponsor of HB 1738 which proposes a system of public financing in Supreme Court races. Senator Oemig sponsored a Senate companion bill, SB 5912.

The cost of Supreme Court races has been escalating since 2000. The bill sponsors expect that in 2010 they will see the same trend. That is why they believe that judges need to have a system to run on their merits and not depend on donations which do not preserve the independence of the courts. The program would be funded by a \$1 surcharge on court filing fees. In this economic period, a financing mechanism is necessary that does not take funds away from other needed programs.

The legislation would provide a robust system of financing and give those judges who choose to participate in the public system funds for their campaigns. Participating candidates would be required to raise a minimum amount of private campaign funds from at least 500 citizens.

Representative Lias said he would like the BJA to indicate that this is an important issue to judges and that, if enacted, it would be helpful to judges. If they could get a

broad statement of support, that would be helpful to him and his colleagues in the Legislature.

Judge Fleck mentioned that the Judicial Selection Work Group has come up with a very good recusal rule that will track money to PACs. She would like to think that rule will take care of the problem and that it will not require public financing.

Representative Lias is hopeful the recusal rule is successful as well. He thinks a lot of people will be watching the court races this fall. If they see the same problems they saw in 2006, there will be public pressure to fix the problem during the 2011 legislative session.

Judge Dubuisson moved and Judge Wickham seconded that the following item be placed on the action item agenda for next month's BJA meeting: Motion that the BJA write a letter to Representative Lias and Senator Oemig in support of the public funding of Supreme Court races policy but that the BJA does not support the funding mechanism in the legislation. The motion carried.

December 10, 2009 Meeting Minutes

It was moved by Judge Appelwick and seconded by Judge Culpepper to approve the December 10, 2009 meeting minutes with the correction noted by Justice Owens. The motion carried.

The minutes need to be corrected to reflect that Justice Owens was not in attendance at the Municipal Court Judge Swearing-in Ceremony.

BJA Long-Range Planning Committee—Proposed Membership and Term Limits

Mr. Hall stated that the BJA is being asked to approve the BJA Long-Range Planning Committee's Proposed Membership and Term Limits.

It was moved by Judge Phillips and seconded by Judge Dubuisson that the BJA approve the proposed revision to the BJA Long-Range Planning Committee membership and term limits. The motion carried.

Washington State Association of Counties (WSAC) Legislative Agenda

Mr. Hall met with Mr. Eric Johnson from the WSAC and requests that the BJA take a position on the WSAC's legislative agenda.

There was discussion regarding how deeply the BJA should get involved in taxing authority bills and there was concern from some members about overriding the will of the people.

Judge Derr moved and Judge Dubuisson seconded that the BJA support the concept of removing the non-supplant language in HB 2637. Judges Derr and Dubuisson accepted the friendly amendment from Judge Fleck that the BJA should support the bill subject to the sunset clause language remaining in the bill. The motion carried. Judge Culpepper abstained.

Co-Sponsorship of Bills

The Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) assist in moving federal legislation relating to court issues. There are three pieces of legislation that the conferences are actively pursuing. One is S 1329, State Court Interpreter Grant Program Act, which the BJA has been actively engaged in. HR 1956, Crime Victim Restitution and Court Fee Intercept Act, allows states to intercept federal tax returns to partially pay LFOs owed to the state and local government. Mr. Hall thinks it is a great benefit to the state to engage in the program.

It was moved by Judge Phillips and seconded by Judge Baker that the BJA send a letter of support requesting sponsorship of HR 1956 to Washington's congressional delegation. The motion carried.

S 1859 would give federal matching of state spending of child support incentive payments. This is an issue that has been pursued for some years and seems relatively easy to support.

It was moved by Judge Appelwick and seconded by Judge Fleck that the BJA send a letter of support requesting sponsorship S 1859 to Washington State senators Patty Murray and Maria Cantwell. The motion carried.

WSBA Dues/Regulations for Judges

Mr. Mungia stated that last year the WSBA started looking at their bylaws. That review included the section of their bylaws regarding classes of membership.

In looking at the Bylaws, they are not trying to increase revenue but they are trying to determine who is considered a judge in the judicial classification. The Bar cannot force anyone to be a member unless they want to practice law. The judicial classification lets judges who want to belong to their association join. Mr. Mungia's goal is that the Bar dues will cover the cost of the member and if a person chooses to belong, the Bar

needs to know the member's name, membership status, and contact information. All they are trying to do is give judges an opportunity, voluntarily, to join the Bar.

Discussion followed and some members were concerned that if the Bar approved the proposed membership revisions, the Bar could discipline judges. Mr. Mungia explained that they currently lose track of some judicial members and all the bar would do if a judge did not comply is revoke the judge's membership in the Bar.

Judge Phillips noted that municipal court judges are required to be members of the Bar. The District and Municipal Court Judges' Association (DMCJA) would like to have a provision in the bylaws stating that a part-time judge, who only judges, can be a judicial member. They would also like retired judges to be able to retain the judicial status so they can pro tem.

There was also some concern over switching from judicial status to active status. Ms. McElroy explained that if a judge leaves the bench and immediately goes back to the active practice of law, he/she just switches to active status and can practice law. If a judge retires, then takes five years to come back to practice law, then he/she has to take the bar exam again.

Ms. Littlewood stated that the Bylaws Committee will bring the entire package back to the Board of Governors during their April meeting. Mr. Mungia stated that even though it is the second reading during the January meeting, he doesn't control the Governors and they could take action on it during the next meeting.

Judge Baker shared that there is some resentment of judges in the legal community. Judges are members of the legal profession and she thinks it is appropriate for judges to expect to be members of the Bar and have them track judges when they retire because judges deserve that if they are actively on the bench full-time. In her neck of the woods, judges make a better living than lawyers. They are part of a team to promote justice and promote the peaceful resolution through the legal arena and judges need to be team players with the Bar. There has to be some overarching concern that judges need to cooperate with the Bar and recognize that they are a partner with them.

It was moved by Judge Phillips and seconded by Judge Eitzen that the BJA write a letter asking the Washington State Bar Association Board of Governors (BOG) not to take action at the next BOG meeting until the BJA has had time to review the final proposed language. The motion carried.

Judge Fleck moved and Judge Phillips seconded that if the WSBA BOG does not delay the bylaws decision, the BJA will not support the revisions as written. The motion carried with Judge Baker and Chief Justice Madsen abstaining.

Public Records Act Work Group Update

Judge Appelwick reported that the Public Records Act Work Group met in December and all were in agreement that the group could not put anything together for this legislative session. The work group will meet regularly and have something ready to go for the 2011 legislative session.

Chief Justice Madsen indicated that she thinks the BJA would like to have this issue resolved by court rule.

GR 29 Work Group Update

Ms. McAleenan reported that she sent the proposed GR 29 Work Group charge to a few BJA members and the only substantive remarks she got back were from Judge David Larson. She is looking for feedback from the BJA on how the work group should proceed.

Judge Baker thinks Judge Larson is headed in the right direction and she volunteered to join the work group.

Ms. McAleenan stated that at this point in time it is unclear who will be the AOC staff for the work group but there will be follow-up in the future.

Legislative Update

Ms. McAleenan reported on legislation of interest to the BJA. HB 2518, the interpreter oath bill, had a hearing on Wednesday. Representative Jamie Pedersen is currently rewriting the bill which is holding the bill in committee. It should be moved out of committee next week.

Representative Pedersen will not give the Yakima County Superior Court judge bill a hearing. When the Legislature is looking for budget reductions, they are very reluctant to have any budget increases.

SB 6499 is the 520 tolling bill. Senator Mary Margaret Haugen is adamant that this be an administrative process instead of a court process. In talking with legislators, the chairs of the committees are of the same mindset but other legislators do not agree. There are hearings on January 21 and 25. Tolling is supposed to begin in March 2011. The BJA does want this to be a court process.

Ms. McAleenan reported that she is not sure there will be a hearing on the judicial retirement age bill.

Court Funding Discussion

Chief Justice Madsen said this topic was added to the agenda because as the new Chief Justice she wants the BJA's direction for interacting with the Legislature regarding court funding issues, particularly at a time when everyone is looking for resources.

Several BJA members stated they would like the BJA to be open to suggestions of general tax revenues and wanted to be at the table when funding decisions are made.

There was general agreement around the room that court funding ought to come from general funds and that the BJA members are concerned about Washington becoming a pay to play court system if funding solutions are not developed.

Chief Justice Madsen stated that one of the funding goals of the BJA Long-Range Planning Committee is that they have taken a position that they do not want to be a fee-based court system. She just wants to make sure everyone is on the same page regarding the judiciary being funded through general funds.

There was concern from some members that the judiciary's revenue ideas could end up being implemented and going straight into the general fund and divided by everyone. Another concern was that the public might think there is a way to process cases differently and/or more efficiently and the public will not like the idea of raising taxes if courts are looking for efficiencies.

Ms. Moore stated that if the judiciary has an opportunity to have general conversations with legislators it is so much better than waiting to see what the Legislature will do to the judicial branch's budget. Once the budgets come out, it is an uphill battle trying to maintain the current level of services.

Mr. Bamberger said this session is unique and the Legislature has clearly told the judicial branch that it is respected and they do not want to harm the branch in budget writing. Day in and day out, the message is "please help us help you." In the absence of something coming out in the way of funding ideas, the branch will be hit with 5-10% cuts. His hope is what comes out of this conversation is that the branch is willing to discuss how to mitigate the likely cuts and position the judicial branch for restoration of resource initiatives in the coming years.

Executive Session

Non members were excused and discussion continued. Mr. Bamberger and Ms. Moore brought forward suggestions that could be shared with legislators regarding general fund revenue sources that might be available to help fund the courts. They were excused after making their presentation.

Discussion continued. Chief Justice Madsen said there are two ways to look at this funding issue: 1) continue to take the position that courts use general funds, stop offering filing fees as the sacrificial funding source, and tell the Legislature that it must fund the judicial branch, or 2) take a more nuanced approach where we have give and take with legislators and offer funding ideas if asked. Several members stated they recognize we are the judicial branch and it is not the branch's job to fund itself. However, it was also stated that this view has achieved little result. There was also general agreement that we do not want Washington to be a fee-based system, although the courts have raised fees in the past for specific needs. The members were asked to make individual comments and it was the clear consensus that the judicial branch should be willing to engage in suggesting other funding sources that may be viable with the understanding that the Legislature could fund other programs with those funds.

Several BJA members voiced their support of being proactive and working with the Legislature regarding judicial branch funding sources.

The regular meeting resumed.

Due to the length of the meeting, Chief Justice Madsen and Judge Lambo decided to suspend the remaining reports and adjourn the meeting.